

Remarks

The objections and rejections of the claims by the Examiner expressed in the first two paragraphs of the Office Action are believed to be overcome by the present amendment.

The rejection of the present claims under 35 U.S.C. 103 as unpatentable over De Schutter alone, or over De Schutter taken with Smetana et al or Klearman et al is respectfully traversed.

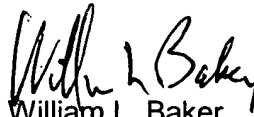
The present claims claim a (1) combination device and (2) a method of using the same to make a barrier against the spread of fire across an opening at the top of an interior wall of a building.

The Examiner criticizes the use of "statements of intended use" in apparatus and process claims. However it has been held that where such statements give life and meaning to the claim, they can be used and are proper limitations in the claims. The use of such language in the present combination and method claims by Applicants is believed to be such a situation and is considered proper by Applicants.

Neither De Shutter, Smetana nor Klearman, or any combination thereof, teach or suggest the presently claimed combination device or method of using such. As the Examiner admits De Shutter does not teach the use of any expandable barrier bag member, much less the presently claimed bag member. The bag used by Smetana is not in the upper channel of the "H" member and does not have all of the features of the bag presently recited in Applicants claims. The "bag" taught by Klearman is in reality a mattress, and thus its teaching are from an entirely non-analogous art. Even still, taking Klearman into consideration, not all of the limitations presently claimed would be taught or suggested.

Accordingly, reconsideration of this application and allowance thereof are earnestly solicited.

Respectfully submitted,



William L. Baker
Attorney for Applicant
Registration No. 24,242

Date: June 15, 2006
62 Whittemore Avenue
Cambridge, MA 02140-1692
Telephone: (617) 498-4557

Patent/xgu/response/L3757-04RESP 060616